

1 BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2 NANCY XEENAN

3 STATE OF MONTANA

4 * * * * *

5	ARTHUR MORGAN HULETT,)	
6	Appellant and)	OSPI 184-90
7	Cross-Respondent,)	<u>DECISION AND ORDER</u>
8	vs .)	
9	BOARD OF TRUSTEES, BOZEMAN)	
10	ELEMENTARY SCHOOL DISTRICT)	
11	NO. 7 ,)	
	Respondent and)	
	Cross-Appellant.)	

12 * * * * *

13 **STATEMENT OF THE CASE**

14 Arthur Morgan Hulett, a tenured teacher, was employed by
15 Bozeman Elementary District No. 7 as a principal for several years,
16 including the 1989-90 school term. In the fall of 1988, the Board
17 of Trustees placed Mr. Hulett on probation for the 1989-90 term as
18 a result of his admission that he had fabricated some teacher
19 evaluations and forged the teachers' signatures on the evaluations.
20 In addition, the Board suspended Mr. Hulett without pay for the
21 balance of his 1988-1989 contract. On August 17, 1989, Dr. B.
22 Keith Chambers, Superintendent of the Bozeman Public Schools, made
23 a written recommendation to the Board of Trustees of Bozeman
24 Elementary School District No. 7 that Arthur Morgan Hulett's
25 employment with the District be terminated pursuant to Section 20-
4-207, MCA.

Dr. Chambers' letter to James J. Screnar of the Board of Trustees sets forth four (4) specific incidents upon which he based his recommendation. Three of the acts involve Mr. Hulett's failure to renew his Class 3 Administrative and Supervisory Certificate in a timely manner. The fourth act was Mr. Hulett's signing of his 1989-90 contract when he knew or should have known that he would not be able to obtain the certificate required by the contract before the commencement of the term of the contract.

Mr. Hulett's hearing before the Board of Trustees was held on September 6, 1989. At the conclusion of the Board of Trustees' hearing, the Board terminated Hulett's employment with the District. Mr. Hulett appealed his termination to the Gallatin County Superintendent of Schools. The County Superintendent held a hearing on the appeal on October 27, 1983. The County Superintendent issued Findings of Fact, Conclusions of Law, and an Order affirming the termination of Hulett by the Board of Trustees.

On January 12, 1990, Hulett forwarded a copy of his Notice of Appeal to the Superintendent of Public Instruction. On January 19, 1990, the Board of Trustees moved to dismiss Hulett's appeal to the State Superintendent on the basis that it was not timely filed. The State Superintendent denied the motion to dismiss the appeal on March 2, 1990.

Hulett raises two issues on appeal:

1. Did the County Superintendent of Schools in her capacity as Hearing Examiner err in basing her decision on Hulett's violation of his Probation Plan, Mentor Plan, Remedial Plan and Job Description, when, in fact, no such

1 specific charges or violations were leveled or alleged
2 against Hulett as a basis for his dismissal, either by
3 the Superintendent of School District No. 7, Dr. B. Keith
Chambers or the Chairman of the Board of Trustees of
School District No. 7, James J. Screnar?

4 2. Did the County Superintendent of Schools in her
5 capacity as Hearing Examiner err in denying Hulett's
6 Motion that she take judicial notice of all facts,
7 matters and things contained in her files relative to
the certification or lack thereof of teachers and
administrators in Bozeman School District No. 7 for the
years 1988-1989 and 1989-1990?

8 Having reviewed the complete record and the briefs of the
9 parties, this State Superintendent now makes the following
10 decision:

11 **DECISION AND ORDER**

12 All of the findings of fact of the County Superintendent are
13 supported by substantial credible evidence in the hearing record.
14 The County Superintendent's conclusion that the Board of Trustees
15 had just cause to dismiss Arthur Morgan Hulett is neither arbitrary
16 nor capricious. The County Superintendent did not abuse her
17 discretion in affirming the decision of the Board of Trustees of
18 Bozeman Elementary District No. 7 to dismiss Mr. Hulett under the
19 provisions of Section 20-4-207, MCA.

20 A review of the transcript pp. 5, 6 and 7 convinces this
21 Superintendent that the County Superintendent's denial of
22 Appellant's motion that she take judicial notice of "all of the
23 facts, matters and things contained in her files relative to the
24 certification or lack thereof, of teachers and administrators in
25 the Bozeman School District No. 7 for the years 1988-1989, and
1989-1990," was not an error in law.

Therefore, this State Superintendent of Public Instruction hereby affirms the December 14, 1989 decision of the Gallatin County Superintendent.

MEMORANDUM

Standard of Review

The standard of review by the State Superintendent is set forth in Section 10.6.125, ARM. This rule was modeled upon Section 2-4-704, MCA, and the Montana Supreme Court has interpreted the statute and the rule to mean that agency (County Superintendent) findings of fact are subject to a clearly erroneous standard of review and that conclusions of law are subject to an abuse of discretion standard of review. Harris v. Bauer, __ Mont. __, 749 P.2d 1068, at 1071, 45 St. Rptr. 147, at 151 (1988); City of Billings v. Billings Firefighters, 200 Mont. 421, at 430, 651 P.2d 627, at 632 (1982). Further, the petitioner for review bears the burden of showing that they have been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986), citing Carruthers v. Board of Horse Racing, __ Mont. __, 700 P.2d 179, at 181, 42 St. Rptr. 729, at 732 (1985). Findings are binding on the court and not "clearly erroneous" if supported by "substantial credible evidence in the record." Id. This has been further clarified to mean that a finding is clearly erroneous if a "review of the record leaves the court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Bd. of Personnel Appeals, __ Mont. __, 676 P.2d 194, at 198 (1984). A conclusion of law is

1 controlling if it is neither arbitrary nor capricious. City of
2 Billings, 651 P.2d at 632.

3 Appellant Hulett is correct in contending that he may be
4 dismissed only for the reasons stated in Dr. Chambers' letter of
5 August 17, 1989. The Montana Supreme Court construed Section 20-
6 4-207 in School District Trustees v. Holden, Mont.____, 754 P.2d
7 506, 45 St. Rptr. 786 (1988) and held that a teacher must have
8 notice of a specific incident as a reason for his termination
9 before the incident can be relied upon as a basis for termination.

10 Chambers letter recommending termination of Huiett clearly
11 indicates that he considered Hulett's probationary status as a
12 factor in recommending Huiett's dismissal. The letter states, in
13 part:

14 4. While Mr. Hulett was on probation with the District
15 for fabricating teacher evaluations and forging teachers'
16 signatures on teacher evaluations, Mr. Huiett signed his
17 1989-1990 employment contract with the District and
18 warranted to the District that he had or would obtain a
19 Class 3 Administrative and Supervisory Certificate prior
20 to the commencement of the term of his contract. When
21 Mr. Hulett signed the contract, he neither had such a
22 certificate nor could he obtain such a certificate prior
23 to the commencement of the term of his contract.

24 The letter goes on to discuss Dr. Chambers conclusion that Mr.
25 Hulett should be dismissed. The District is entitled to consider
the circumstances under which Hulett's dismissal was recommended.
Hulett knew he had been placed on probation. Contrary to Hulett's
contention, his suspension without pay for the 1988-1989 contract
was not the sole consequence of his fabrication and forging of

1 teachers' evaluations. In addition to the suspension, the District
2 placed him on probation for the following 1989-1990 contract term.

3 At his hearing before the County Superintendent, Appellant
4 Hulett did not contend that he had a valid Class 3 Administrative
5 and Supervisory Certificate at the time that he signed his contract
6 with the District or at the time of the hearing. Rather, Appellant
7 presented a list off "mitigating circumstances" which he contends
8 must be considered by the Board; and when considered, deprives the
9 Board of the "just cause" required to dismiss him under Section 20-
10 4-207, MCA. Hulett claims the following mitigating circumstances:

11 1. The notices sent to him by the District were
12 inconsistent. He admitted the responsibility for
13 renewing his certificate was his. However, he contends
14 that once the District decided to send him a notice of
the status of his certificate, it had a duty to send him
an accurate notice.

15 2. Hulett contends that it was the "practice" in the
16 District to hire teachers without requiring that the
17 teacher have the required certificate at the time of
contracting with the District. Therefore, he cannot be
required to have the Class 3 certificate prior to the
commencement of the term of his contract.

18 3. Hulett contends that he did not read the contract
19 sent to him for the 1989-1990 term because a letter the
20 District sent with the contract "mislead" him to believe
that the only change in the contract was in "format," not
substance.

21 4. Hulett argues that he cannot be held accountable for
22 policies adopted by the Board of Trustees during the
period he was on suspension without pay.

23 5. Hulett contends that it is not his fault that his
24 contract "lapsed" on June 30, 1989 because he handled
the renewal the same way he had handled renewals in the
25 past. He admits, however, that but for the fact that he
was suspended in the fall of 1988 he would have renewed
his certificate in 1988 and had he done so, the

1 certificate would not have lapsed on June 30, 1989,
2 thereby requiring that he take the National Teacher
Examination.

3 The decision of the County Superintendent deals with each of
4 these "mitigating circumstances." Despite the inconsistency in
5 notices, Hulett testified that he knew that his certificate had
6 expired on June 30, 1988. Conclusion of Law #7.

7 The County Superintendent found that it was a practice of the
8 District to contract with teachers and administrators who did not
9 have a current certificate at the time they were hired. She went
10 on to conclude that because of this fact Hulett was not immoral.
11 See Conclusions of Law #4 and #5. However, the County
12 Superintendent further concluded that Hulett did not stand in the
13 place of the typical teacher or administrator in Respondent's
14 District because he was on probation for fabricating and forging
15 teachers evaluations at the time of his dismissal. Conclusion of
16 Law #6.

17 In regard to Board Policy 6144 adopted during the period of
18 time Mr. Hulett was on suspension, the County Superintendent
19 correctly concluded that Mr. Hulett had a duty to inquire about
20 matters that may affect his employment with the District. This
21 included a review of policies that had been adopted by the Board
22 during the period he was suspended without pay.

23 The letter that Mr. Hulett received with the 1989-1990
24 contract merely stated that there was a change in the contract
25 format and expressed a "hope" that the questions in regard to the

1 change will be minimal and explicable. It is this Superintendent's
2 conclusion that the letter was neutral as to whether or not Mr.
3 Hulett should read the contract. Mr. Hulett voluntarily and
4 unilaterally decided not to read the employment contract he signed
5 with the District.

6 The Board of Trustees gave Mr. Hulett a second chance to
7 retain his employment with the District when it merely suspended
8 him for the balance of the 1988-1989 contract and placed him on
9 probation for the 1989-1990 contract term. A reading of the
10 hearing transcript leaves this Superintendent with the impression
11 that Mr. Hulett did not take seriously the fact that he was in a
12 "probationary status" during his 1989-1990 contract with the
13 District.

14 Dated this 13 day of November, 1990.

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NANCY KEENAN
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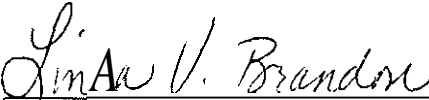
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 14th day of November, 1990,
a true and exact copy of the foregoing Decision and Order was
mailed, postage prepaid to the following:

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